the simple, elementary precaution of asking a few questions. Had he done so, the mishap would not have happened.

I should have thought that some probing at least into every patient's history was the very first thing any doctor would start with on seeing a patient. The doctor here was guilty of negligence by his omission to do so. It is quite irrelevant that up to 1960 doctors in government and municipal hospitals habitually gave injections without tests. What could have been relevant was evidence that it was accepted practice among government doctors throughout the country that the patients' history was never probed before prescribing a penicillin injection. I doubt that any doctor in government service can be found to testify in court to this effect. In this respect, there was no question of viewing this 1960 case through 1964 spectacles.

By way of gilding the lily, perhaps, it is not out of place to point out that one doctor at least in the government service — which in practice was said never to have carried out sensitivity tests before 1960 — took enough precautions in April 1958 on the very same patient which enabled him to discover her allergy as he noted it on her out-patient card. He exercised the standard of care which he must have thought necessary. Dr. Devadason did not, and his failure unquestionably was negligence.

As to general damages, I awarded $8,000 to the deceased's son and $1,500 to her mother: for special damage $750. Until notice of appeal is given against the quantum of my award I do not propose to dilate on this subject.

Order accordingly.

SOCFIN CO. LTD. v. CHAIRMAN, KLANG TOWN COUNCIL

[O.C.J. (Ong J.) July 8, 1964]

[K.L. — Originating Motion No. 18 of 1963]

Rating — Above-ground storage tanks — Tanks resting on pre-cast concrete pillars and reinforced concrete raft — Whether raft means platform — Whether rateable as 'building' or 'structure' — Whether rateable as land — Whether they enhance value of holding — Town Boards Enactment (Cap. 137), s. 2.

The respondent in determining the annual value of the appellant's holdings for rating took into account the bulk storage tanks standing thereon. The storage tanks were used for storing palm oil and they were vertical cylinders resting on pre-cast concrete pillars which stood freely on a reinforced concrete platform foundation. The tanks themselves consisted of pre-cast bottom, side and roof steel plates which were assembled and riveted on site to form the bulk storage tanks. The platform foundation rested on prepared ground.

The appellant's contended that the tanks were not rateable since they were neither "land" nor "building".

Held: (1) the storage tanks were buildings, being structures connected with platforms and pillars and were accordingly rateable;

(2) the storage tanks were annexed to the land for its better use and enjoyment and formed part of it and accordingly rateable;

(3) the storage tanks enhanced the value of the holdings on which they stood and as they were not machinery used for industrial purposes under section 2 of the said Enactment they were accordingly rateable on this ground also.

Cases referred to:—

(1) *Shell Company of the Federation of Malaya Ltd.* v. *Commissioner of the Federal Capital of Kuala Lumpur* [1964] M.L.J. 302.

(2) *Shell-Mex & B.P. Ltd.* v. *Clayton (Valuation Officer)* [1961] R.V.R. 357.

(3) *Shell-Mex & B.P. Ltd.* v. *Childa (Valuation Officer)* [1962] E.G.R. 939.

(4) *Clayton* v. *Good, Havercraft & Co. Ltd.* [1961] R.V.R. 6.

(5) *Reid* v. *Smith* (1906) 3 C.L.R. 656, 672.

(6) *Ward* v. *Taylor* [1901] 1 Ch. 523 at p. 541.

MOTION.

A. L. Hills for the appellants.

L. P. Thean for the respondent.

Cur. Adv. Vult.

Ong J.: This is an appeal against the rating assessment imposed by the Chairman of the Klang Town Council on the appellant's holdings in Port Swettenham. The Socfin Company's contention is that, in assessing the annual value of their holdings, no account should have been taken of the bulk storage tanks standing thereon because nothing is rateable which is not land or buildings.

The holding is thus described by Mr. C. H. Williams, chartered surveyor, in his report:

"On this site there are 13 bulk storage tanks, the subject of this appeal and also three godowns, an office and ancillary buildings which have also been assessed and to which no objection has been made. The storage tanks are used for storing palm oil and they are vertical cylinders resting on pre-cast concrete pillars which stand freely on a reinforced concrete raft foundation. The tanks themselves consist of pre-cast bottom, side and roof steel plates which are assembled and riveted on site to form the bulk storage tanks. The raft foundation merely rests on prepared ground. Details of the sizes of the tanks which are identical, are as follows:

Capacity in tons	.. ..	500
Diameter in feet	.. ..	39' 4 7/16"
Height in feet	.. .. ..	17' 6 23/32"

A network of pipe lines is connected to the tanks. These pipes are joined together with nuts and bolts and can be disconnected from the tanks and taken away in lengths. The tanks are occassionally jacked up for re-setting to a proper level and the levelling-up is done by means of timber wedges.

The pipes are attached to the tanks by bolts and nuts and lead to a larger common pipe which passes through the pump-house to allow railway wagons to empty their palm oil into the tanks. The same set of pipes is used

for pumping oil from the tanks through the pump-house for transmission through the supply pipes for unloading on to sea-going ships at two points at the wharfside. In each tank there are steam heating coils which are heated by a boiler housed in the pump-house and boiler room near the tanks. These heating coils warm the palm oil sufficiently for it to flow easily along the pipes."

Unlike the recent appeal by the *Shell Company of the Federation of Malaya Ltd.*,[1] in which I came to a different conclusion from Adams J. with regard to underground tanks, there are no previous decisions by any court in this country as to whether above-ground storage tanks are rateable.

There are, of course, decisions of the Lands Tribunal and the Court of Appeal in England which held that oil storage tanks — even of colossal size as compared to those in Port Swettenham — are not "buildings" within section 22(1)(a) of the Rating and Valuation Act, 1925. In *Shell-Mex & B. P. Ltd.* v. *Clayton (Valuation Officer)* [2] it was held by Mr. Erskine Simes Q.C., in the Lands Tribunal that the hereditament was assessable direct to net annual value under section 22(1)(b) of the Rating and Valuation Act, 1925, because the tanks were not "buildings" within section 22(1)(a) which referred to things of a similar character to a house, factory or mill. In another case, *Shell-Mex & B. P. Ltd.* v. *Childa (Valuation Officer)* [3] a decision of Mr. Erskine Simes to the same effect was upheld by the Court of Appeal.

I have referred to these two cases, cited by counsel for the appellant, because it has been urged upon me that the word "building" must be given its ordinary every-day meaning. It was pointed out that, in the earlier case, Mr. Erskine Simes said:

"Applying the test formulated by this tribunal in *Clayton* v. *Good, Havercraft & Co. Ltd.*,[4] I have come to the conclusion that these tanks cannot be said to be of a similar character to a house, factory or mill, but even assuming that a wider construction should be applied, I do not think that anyone looking at those tanks would refer to them as 'buildings,' and as I said in the *Havercraft case* I do not think that the definition of a 'building' in the Oxford English Dictionary as 'That which is built' can be applied to the word in this context."

I was also referred to a passage in the judgment of Lord Evershed M.R., in the later case, which was as follows:

"Do you, in the ordinary use of the English language, describe what I have called the tanks (bearing in mind the method of putting them up, which I have shortly described) as 'building'? Or, more strictly in this court; was the Lands Tribunal wrong — is it shown to our satisfaction that he was wrong when he said that in his view they were not buildings?"

With respect, I entirely agree that words should ordinarily be given their everyday meaning. They must, nevertheless, be considered in their proper context. In the cases cited above, subsection (4) of section 22 in the English Act contains this definition of a 'non-industrial building":

"In this section the expression 'house' includes part of a house, the expression 'non-industrial building' means a building, or part of a building, of any description, with the exception of factories, mills and other premises of a similar character used wholly or mainly for industrial purposes, and of premises valued as part of —

(a) a railway, dock, canal, gas, water or electricity undertaking, or

(b) any public utility undertaking not falling within the preceding paragraph."

Lord Evershed, in his judgment, of course did not say that the ordinary meaning of the word "building" should prevail in whatever context it may appear, as will be observed in the following passage:

"I read again the relevant part of subsection (4), 'means a building of any description, with the exception of factories, mills and other premises of a similar character, and of premises valued as part of a railway, dock, canal, gas, water or electricity undertaking' etc. In other words, looking at that subsection I think for my part that 'building' should not be given an unduly or unnaturally narrow meaning *because of its association with those two examples.* On the other hand, I have referred already to the distinction found originally in the Third Schedule to the 1925 Act and repeated in the subsequent legislation, including the order of 1927, all of which, I think it is conceded, should be read together with this Act. I find a distinction between 'building' and 'structure' which shows at least this, that since, as I conceive, 'structure' must have the wider embrace, not every structure is a building, though it may well be that every building is a structure. In other words, looking at the context in subsection (4) and having in mind the distinction I have mentioned, you are, as I think, thrown back simply upon this, that the word 'building' is to be given its ordinary sense, not unduly restricted, not unduly expanded, the ordinary sense in which as a matter of the English language we would use that word."

Now, "building" has a different meaning under our rating law, the Town Board Enactment. It "includes any house, hut, shed, or roofed enclosure, whether used for the purpose of a human habitation or otherwise, and also any wall, fence, platform, septic tank, staging, gate, post, pillar, paling, frame, hoarding, slip, dock, wharf, pier, jetty, landing-stage or bridge or any structure connected with the foregoing." When it is seen that this definition includes even a septic tank, it will be evident that the ordinary meaning of building cannot possibly be said to apply. What, I think, is material in this case is whether the storage tanks are "structures" connected with the particularisations, namely, platform and pillar.

The basic meaning of "structure", as I understand it, is a thing constructed. The appellant's tanks were constructed, or built up, on prepared sites by assembling and riveting precast bottom, side and roof steel plates. They are clearly not buildings in the ordinary sense, but, without any undue extension of the meaning, would it not be perfectly true to describe them as structures? As Lord Evershed said: "Not every structure is a building, though it may well be that every building is a structure."

A "raft", in the *Oxford English Dictionary*, is "a flat structure of logs, inflated skins, etc., for the conveyance or support of persons or things on water." And a "platform" is "a raised level surface formed with planks, boards or the like." Beneath each of the Socfin Company's tanks there is concrete foundation described by Mr. Williams as a "raft". It is in fact a raised level surface, and I ask myself: "Is not platform a more appropriate word than raft? Why eschew the more proper and fitting word instead of another which, in its true sense, means something that floats on water?" In my opinion the reason is all too clear. The report by Mr. Williams was made expressly for this appeal and he knew, as well as I do, that "any structure connected with a platform" would fall within the definition of "building". Incidentally, it may be observed that a raft is itself a "structure", according to the Dictionary.

I am accordingly satisfied that the storage tanks are buildings, being structures connected with platforms and pillars, and they are rateable for that reason.

Counsel for the Klang Town Council goes further. He contends that the Socfin tanks are rateable, not only as "buildings" but also as land. He refers to *The Torrens System in Malaya*, by my friend, Mr. S. K. Das, who says, on page 111:

"Barton J. in *Reid* v. *Smith* (5) warned against the danger of losing sight of the distinction between the wide word 'annexation' and the more restricted word 'affixation', for the degree of annexation may depend largely on the weight of the articles originally annexed. Physical attachment, beyond mere gravitation fixing the contested building to the freehold is not necessarily a condition precedent of the question whether the building itself has become part of the soil. The fact that a house erected by a lessee rests by its own weight upon piers or piles fixed into the ground and is not otherwise affixed to the freehold does not necessarily constitute it a chattel removable at the will of the lessee: in determining whether such building does or does not form part of the freehold regard must be had to the object, as well as the degree, of annexation."

In that case, the principle is stated by O'Connor J., at page 680 in these words:

"In general, it appears to me that the true test to be applied in determining whether a chattel has lost its character of chattel and become part of the freehold, is to inquire what is the object and purpose of its being attached to the freehold? If the object and purpose of its being attached to the freehold is not the enjoyment of the chattel itself, but the better enjoyment of the freehold, it is clear that it must be taken to have become annexed to the freehold, and become part of the freehold. That principle is stated in a very few words in a judgment quoted by Stirling L.J., *In re Falbe, Ward* v. *Taylor*,(6) in which he says this:—'The question what constitutes an annexation sufficient to make the chattel part of the land 'must depend on the circumstances of each case, and mainly on two circumstances, as indicating the intention, viz., the degree of annexation and the object of the annexation.' Blackburn J. gave various examples in which the degree of annexation might be material. As regards the object of the annexation the question to be considered is, whether the object is to improve the free-hold to which the annexation is made, or whether it is the more complete and better enjoyment of the chattel itself.' The expression, 'improving the freehold,' means improving the land, to which the annexation is made, and it does seem to me that that affords a very good test of the object of the annexation."

In the instant case there can be no doubt that the tanks are sited on the holding to improve the land and for its better user and enjoyment. Indeed the object and purpose of having the holding at the wharfside is to have storage tanks there for easy loading of the company's oil on ships. I am satisfied, therefore, that these storage tanks are annexed to the land so as to form part of the land, and fall to be rated on that ground also.

Finally, and for good measure, Mr. Thean, counsel for the respondent, submits that, even on the basis of "annual value", the storage tanks fall to be rated because "annual value" means "the estimated gross annual rent at which the holding might reasonably be expected to let from year to year." The tanks undoubtedly enhance the value of the holding, and they are not machinery used for industrial purposes which "shall not be taken into consideration" under section 2 of the Town Boards Enactment. I would, in this connection refer to certain of the principles of valuation set out on page 371 of *Ryde on Rating* (11th Ed.) namely:

"(3) It must always be 'the actual house or other property for the occupation of which the occupier is to be rated and it is to be valued as it in fact is — *rebus sic stantibus*', and not by reference to future value.

(6) 'Every intrinsic quality and every intrinsic circumstance which tends to push the value up or down' must be taken into consideration.

(7) The value arrived at should represent 'the figure at which the hypothetical landlord and tenant would.... come to terms as a result of bargaining for that hereditament in the light of competition or its absence in both demand and supply, as a result of 'the higgling of the market' ".

The sea-front along Port Swettenham, as a port, is lined with a considerable number of ware-houses or go-downs, constructed of corrugated iron sheets and other building materials. If these structures, used for storage of dry goods, are rateable for the enhanced value they gave to the holdings, I can see no distinction which would make a silo for grain not rateable, or a tank constructed for storage of liquids. The utilitarian value of a warehouse, silo or tank necessarily enhances the value of a holding. I am therefore of opinion that Mr. Thean's submission on this additional ground should also be upheld.

The appeal is accordingly dismissed with costs, higher scale.

Appeal dismissed.

Solicitors: *Donaldson & Burkinshaw*; *Shook Lin & Bok.*